IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12808 of 2004
with
CIVIL APPLICATION No.10172 of 2004
with
CIVIL APPLICATION No.9190 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNJHA AYURVEDIC PHARMACY -THRO-ITS PARTNER D.V.SHAH

Versus

COMMISSIONER OF FOOD AND DRUGS CONTROL

Appearance:
MR PK JANI for Petitioner No. 1
MR PRADIP BHATE, Ld. AGP for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2
MR FB BRAHMBHATT for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. When the Civil Applications are are taken up for hearing with the consent of the learned Counsel appearing for the parties, the main matter itself is taken up for hearing.

2. Upon hearing Mr.P.K.Jani, learned Counsel for the petitioner, Mr.Brahmbhatt, learned Counsel for the private respondents and Mr.Bhate, learned AGP for the State authorities, it appears that the grievance of the petitioner is that the renewal application for licence is not considered by respondent authority. It has been submitted by the learned AGP on behalf of the respondent authority that the licence was granted to partnership firm and out of the three partners, two partners who are represented by Mr.Brahmbhatt have objected to the renewal of the licence and, therefore, the licence is not renewed. Mr.Brahmbhatt appearing for respondents No.3 and 4 submitted that the licence is not renewed since 2002 and there are serious disputes amongst partners namely the petitioner and respondents No.3 and 4 though all are real brothers and, therefore, if the licence is renewed, the activity of the partnership may continue, which may result into additional civil as well as criminal liabilities and, therefore, it has been submitted that the power of this Court under Article 226 of the Constitution of India may not be exercised, when it is essentially a dispute between the partners of the partnership firm. Mr.Brahmbhatt has relied upon the decision of the Apex Court in case of "Dwarka Prasad Agarwal (D) By LRS and Anr. v B.D.Agarwal and Ors", reported in 2003(6) SCC, 230; in case of "State of Jammu and Kashmir v. Ghulam Mohd. Dar and Anr.", reported in AIR 2003 SCW, 6457 and also the decision in the case of "Kulchhinder Singh and Ors. v. Hardayal Singh Brar and Ors.", reported in AIR 1976 SC, 2216 for supporting his contention that this Court under Article 226 of the Constitution of India would not exercise the power when it is a matter between the private disputes and the petition is also not maintainable.

3. Under the above circumstances, it appears that there is no dispute that the licence was granted to a partnership firm and from the record of the Special Civil Application and more particularly from the affidavit-in-reply filed on behalf of respondents No.3 and 4 as well as correspondences made by respondents No.3 and 4 to the respondent authority, it appears that there is dispute regarding functioning of the factory and the activity of the partnership firm amongst the partners and as a result thereof the manufacturing activity has come to a grinding halt since 2004, though of course the

licence had expired in the year 2002 and renewal application was pending. If the Renewing Authority has not considered the renewal application of the petitioner on the ground that the same is objected by the other partners and when there are serious disputes amongst partners it cannot be said that the action of respondent authority of not considering the matter for renewal of the licence is unreasonable or arbitrary.

4. Mr.Jani, learned Counsel appearing for the petitioner made an attempt to submit that the petitioner is ready to undertake all responsibilities pertaining to the manufacturing activities in case the licence is renewed and the other brothers of the petitioner who are also partners of the firm may not be held responsibility at all and the petitioner for such purpose has made a declaration by making pleadings on oath in this petition. He further submitted that an attempt on the part of the other partners of the partnership, who are respondents No.3 and 4 herein is to see that none is allowed to continue with the business and the activity of the partnership firm which is running business for about 100 years is put to a grinding halt.

5. In my view, merely because one of the partners is ready to undertake responsibility in case the licence is renewed would not be a sufficient ground for directing the renewal of the licence unless the said partner at whose instance the application for renewal of licence is made is representing the authority of all partners. Further after the licence is renewed it may result into continuation with the activity which has been put to a grinding halt since 2004. It may also result into affecting and creating the rights qua the third parties vis-a-vis the rights of the partners and consequencial liabilities. Such can be ordered only if any of the partners is representing the lawful authority of all the partners. It appears that there is no order of any competent Court of allowing the petitioner to represent the interest of respondents No.3 and 4 who are also the partners of the firm and, therefore, merely because the petitioner No.1 has shown willingness to shoulder the responsibilities for breach of the provisions of the Act or otherwise, in my view, cannot be said to be a sufficient ground at this stage for ordering the authority to renew the licence. Such an order can be passed only if any of the partners is given authority by the competent Court to represent the interest of all other partners or if any receiver is appointed to function on behalf of the firm by the competent Court. Such an exercise cannot be undertaken by this Court in a

petition under Article 226 of the Constitution of India, in a matter of grant/renewal of licence.

6. In view of the above, I find that the directions as prayed for by the petitioner cannot be granted. However, it is clarified that it would be open to the petitioner to resort to the proper proceedings before the appropriate Court in case the petitioner is desirous to get the authority to function on behalf of the firm by representing the interest of other partners or to act as receiver of the Court in appropriate civil suit. As and when such authority is granted or, if any, receiver is appointed authorising to function on behalf of the firm it would be open to the person who is so authorised to pursue the proceedings in accordance with law which may also include for renewal of licence in accordance with law. Subject to the aforesaid observations, the petition is dismissed. Rule discharged.

7. In view of the order passed in the main Special Civil Application, Civil Applications would not survive. Hence the same shall stand disposed of accordingly.

1.2.2005 (Jayant Patel, J.)
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